



815,944

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Allen et al. Examiner: Qian, Celine X.
Serial No.: 09/815,944 Group Art Unit: 1636
Filed: March 22, 2001 Docket No.: R-654/40338.30USU1
Title: Transgenic Mice Containing Melanocyte Stimulating Hormone Receptor
Gene Disruptions

CERTIFICATE UNDER 37 CFR 1.10

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I hereby certify that this paper or fee is being deposited with the United States Postal Service 'Express Mail Post Office To Addressee' service under 37 CFR 1.10 on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

By: *Sandra Lee Bourassa, PLS*
Name: *Sandra Lee Bourassa, PLS*

DECLARATION OF ROBERT DRISCOLL PURSUANT TO 37 C.F.R. § 1.132

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

I, Robert Driscoll, residing at 23 Chicory Lane, San Carlos, CA 94070, hereby declare:

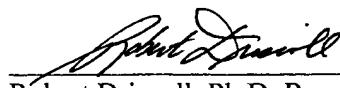
1. I am presently employed as Vice President of Intellectual Property & Legal Affairs at Assignee, Deltagen, Inc., in San Carlos, CA. I have also previously served as the Company's Senior Director of Intellectual Property, in which position I managed and oversaw the Company's intellectual property portfolio, including the Company's patent filings. I possess a Ph.D in Chemistry, received from the California Institute of Technology. I also possess a J.D., received from Loyola Law School, Los Angeles. I am a registered patent attorney (Reg. No. 47,536).

2. I am familiar with the above-cited application. I am familiar with the Office Action mailed January 13, 2005. I am aware that the Examiner has rejected the claims, in part, for allegedly failing to meet the utility requirement. I am also aware that the Applicant has argued that a commercial sale of a mouse with a disrupted melanocyte stimulating hormone receptor allele within the scope of the claimed subject matter ("melanocyte stimulating hormone receptor gene knockout mouse") should satisfy the utility requirement.

3. In support of the Applicant's aforementioned argument, I hereby state that I have reviewed Deltagen's internal sales records regarding the melanocyte stimulating hormone receptor gene knockout mouse. According to these records, the melanocyte stimulating hormone receptor gene knockout mouse has been delivered to at least two (2) large pharmaceutical companies. The contractual terms by which the mice were transferred prohibit Deltagen from identifying the names of these companies. However, the companies are ranked among the top 10 pharmaceutical companies worldwide (based on sales).

4. It is my understanding, based on communications with our pharmaceutical company customers, that transgenic knockout mice obtained from Deltagen are used for studying gene function and for human therapeutic drug development.

5. I further declare that all statements made herein of my own knowledge are true; and further that these statements were made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the above-referenced application or any patent issuing thereon.



Robert Driscoll, Ph.D, Reg. No. 47,536

11 April 2005

Date